

## **REMARKS**

The Examiner indicated that claims 3, 4, 11-13, 18, and 20-24 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. To that effect, Applicant has amended claims 3, 11, 18, and 20 as independent claims with the remaining allowable claims depending therefrom. Applicant submits that said claims are in proper format.

The Examiner rejected claims 25 and 26 under the judicially created doctrine of obviousness-type Double patenting as being unpatentable over claims 1-27 of US Patent 6,604,643 and over claims 1-27 of US Patent 6,769,557. A Terminal Disclaimer is attached to overcome the double-patenting rejections.

The Examiner rejected claims 1, 2, 5-10, 14-16, 19 and 26 under 35 USC 102(b) as being anticipated by Begouen (FR 2,586,231). The Examiner also rejected claim 25 under 35 USC 102(e) as being anticipated by Burton (GB 2,082,552). The Examiner rejected claim 17 under 35 USC 103(a) as being unpatentable over Begouen in view of Michael et al. (US Patent 6,604,643).

Applicant's Bottle Security Device includes an outer member 102, and intermediate member 120, an inner member 146, and a cover assembly 182 including a non-rotatable cover base 184 and a rotatable member or cover cap 214. In short, rotatable member 214 is rotated to unlock the mechanism whereby inner member 146 moves outwardly or downwardly from within the cavity of outer member 102 to an unlocked position. Generally, intermediate member 120 engages inner member 146 in a locked position to lock the device on the neck of a bottle. The device also includes a locking mechanism which in a non-rotated locked position prevents the rotatable member 214 from rotating to an unlocked position which allows intermediate member 120 to be unlocked from inner member 146 so that the device may be removed from the bottle neck.

Outer member 102 has a frustoconical or generally cylindrical side wall 104 and an annular top wall 106 connected thereto and defining an entrance opening 114 in communication with a cavity 108 within side wall 104. Intermediate member

120 is disposed within cavity 108 of outer member 102 and is substantially enclosed therewithin. A plurality of parallel ribs 116 extend downwardly from top wall 106 and inwardly from side wall 104 whereby adjacent pairs of ribs 116 form wedge-shaped channels 118 therebetween for receiving a portion of cover base 184 to prevent rotation thereof.

Intermediate member 120 is generally frustoconical or cylindrical and defines an internal cavity 122 which fits over and substantially encloses inner member 146. Intermediate member 120 includes an annular side wall 124 with a plurality of broad resilient engaging fingers 126 cantilevered upwardly from side wall 124 such that fingers 126 extend upwardly from adjacent a lower end of outer member 102. Engaging fingers 126 alternate with strengthening or seat fingers 128 also cantilevered upwardly from side wall 124 so that they are closely adjacent or abut inner surface of side wall 104 of outer member 102. Strengthening fingers 128 provide additional structural strength to the device to prevent deformation of side wall 104 of outer member 102 and generally prevent twisting or bending forces from allowing disengagement of the intermediate member and the inner member whereby the device could be unlocked. In addition, fingers 128 extend upwardly adjacent the upper end of the device whereby cover base 184 is seated atop fingers 128. Each engaging finger 126 includes a plurality of inwardly facing arcuate teeth 136.

Inner member 146 includes an annular side wall 148 and a circular top wall 150 connected thereto. A plurality of locking fingers 152 is cantilevered downwardly from side wall 148, each including an inner shoulder 154 for lockably engaging a bead of a bottle neck. Locking fingers 152 are resilient so that they return to the resting position after moving inwardly or outwardly when not otherwise constrained. A pair of connecting fingers 164 is also cantilevered downwardly from side wall 148. Side wall 148 of inner member 146 includes a plurality of radially outwardly extending annular teeth 168 which are configured to engage teeth 136 of each engaging finger 126 to lock inner member within the cavity of intermediate member 120.

A lower ring member 174 is generally frustoconical and includes a pair of opposed receptacles 176 for connecting to connecting tabs 166 of inner member 146. Ring member 174 is configured to prevent tampering with the security device.

Cover base 184 includes a substantially flat circular wall 186 having a generally flat upper surface 187. A plurality of tabs 188 is connected to and extends radially outwardly from the perimeter of circular wall 186. Tabs 188 are wedge-shaped when viewed from above and are configured to fit matingly within wedge-shaped channels 118 between ribs 116 of outer member 102 and are slidably received therein to prevent cover base 184 from rotating within outer member 102. Hollow cylinder 200 extends upwardly from center wall 186 with a pair of arm springs 202 extending radially outwardly therefrom. A pair of locking depressions 204 are formed in wall 186, each extending downwardly therein.

Cover cap or rotatable member 214 includes a substantially flat or slightly concave circular top wall 216 and a substantially cylindrical side wall 218 extending downwardly therefrom and connected to the perimeter of top wall 216. A plurality of camming arms 230 extend outwardly from side wall 218, each including a camming surface 242 which slidably engages a respective cam follower 138 of a respective engaging finger 126 of intermediate member 120 to move fingers 126 outwardly as cover cap 214 is rotated. Cover cap 214 is rotatably disposed atop cover base 184 to form an enclosure 244 therebetween. Camming arms 230 lie closely adjacent or abut lower surface 112 of outer member top wall 106. Top wall 216 is disposed within entrance opening 114 whereby the outer perimeter of top wall 216 lies closely adjacent the inner perimeter of entrance opening 114, thus allowing top wall 216 to rotate within entrance opening 114 while helping to prevent tampering with the device. Each of top wall 216 of cover cap 214 and top wall 106 of outer member 102 form a part of top wall 247 of a security device whereby each of top wall 216 and top wall 106 forms a portion of the upper surface of the device.

The locking mechanism is disposed within enclosure 244 of cover assembly 182 and includes a pair of pistons 246 and corresponding coil springs 248 for biasing piston 246 into a locked position. Each piston is disposed in a respective

lock depression 204 of cover base 184 in the locked position and moves out of depressions 204 in response to a magnetic key 256 whereby cover cap 214 is rotatable from a non-rotated position to a rotated position which moves engaging fingers 126 radially outwardly to disengage from inner member 146, thereby unlocking the device and allowing inner member 146 to move from a locked position within cavity 122 of intermediate member 120 to an unlocked position for removal of the security device from the bottle neck. When rotatable member 214 is in the locked position, pistons 146 are disposed partially in depressions 204 to create an interference to prevent rotation of member 214.

The Examiner rejected claims 1, 2, 5-10, 14-16, 19 and 26 under 35 USC 102(b) as being anticipated by Begouen (FR 2,586,231).

In establishing a prima facie case of anticipation under 35 USC § 102, the Examiner must find every element of the applicant's claim in a single reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987). Other references may be used only to interpret the allegedly anticipated reference. Studiengesellschaft Kohle, m.b.H. v. Dart Industries, Inc., 726 F.2d 724, 220 USPQ 841 (Fed. Cir. 1984). This idea was similarly upheld in Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F. 2d. 1565, 18 USPQ2d. 1896 (Fed. Cir. 1991), wherein the Court held that, "Invalidity for anticipation requires that all of the elements and limitations of the claims are found within a single prior art reference."

Claim 1 has been amended to indicate that the inner member includes a plurality of downwardly extending locking fingers which are adapted to fit around at least a portion of the neck of the bottle. Claim 1 is further amended to indicate that a portion of each locking finger of the inner member is disposed in the intermediate member cavity. Applicant submits that claim 1 as amended is neither taught nor suggested by Begouen. Begouen teaches an outer member 1, an intermediate member 5 and an inner member generally at 17. The Examiner has indicated that the inner member includes elements 17 and 20, that the intermediate member includes elements 5 and 10 and that element 20 of the inner member is received

in the cavity 7 of the intermediate member. Begouen further includes a rotatable member 15 which moves between locked and unlocked positions to selectively lockably engage member 20. Rotatable member 15 is moved by locking mechanism 3 which is operated by a key 4. Similar to Applicant's invention, Begouen teaches that inner member 17 includes a plurality of downwardly extending locking fingers 18 which engage the bead of a bottle neck to lock the device thereon. However, it is clear that locking fingers 18 cannot be disposed within the cavity 7 of intermediate member 5 of the Begouen device. Thus, Applicant submits that claim as amended is allowable and that claims 2, 5-10 and 14-16 are allowable as depending from claim 1.

Applicant further submits that claim 10 is independently allowable. More particularly, claim 10 requires that the entire rotatable member is disposed above the inner member when the device is locked on the bottle. As the Examiner noted, the inner member of the Begouen device includes elements 17 and 20. Element 20 must be deemed a portion of the inner member of the Begouen device in order for a portion of the inner member to be disposed in the intermediate member cavity, as required by claim 1 of Applicant's invention. As clearly shown in Fig. 4 of Begouen, the rotatable member 15 therefore cannot be entirely above the inner member, which includes element 20. To the contrary, the rotatable member 15 of Begouen must be disposed at least partially to the side of element 20 in order to lockably engage element 20. Therefore, Applicant submits that Begouen neither teaches nor suggests the limitations of claim 10 and that claim 10 is therefore independently allowable.

Claim 19 has been amended to indicate that the inner member includes a plurality of downwardly extending locking fingers, that the outer member has a side wall and that the at least one engaging finger projects upwardly within the cavity between the outer member side wall and the locking fingers. Although the Examiner does not specifically indicate what is considered to be the engaging finger in the Begouen reference, it appears that element 12 or a combination of elements 10 and 12 are deemed to be the engaging finger of the Begouen device. It is clear

that elements 10 and 12 of Begouen does not extend upwardly within the outer member cavity between the outer member side wall and the locking fingers nor is it possible with the Begouen configuration for such an engaging finger to be disposed between the outer member side wall and the locking fingers, which in Begouen are in abutment along the entire length of the locking fingers when the device is in a locked position on the neck of a bottle. Applicant thus submits that claim 19 as amended is allowable.

Applicant respectfully disagrees with the Examiner with regard to the rejection of claim 26. In part, claim 26 indicates that the bottle security device provided includes a plurality of resilient fingers which extend upwardly inside the outer member cavity and selectively lockably engage the inner member. Applicant submits that Begouen fails to teach or suggest a plurality of fingers extending upwardly inside the outer member cavity which selectively lockably engage the inner member. Applicant further submits that Begouen fails to teach such fingers which are resilient. While the Examiner did not indicate specifically what is deemed to be the finger, Applicant assumes that element 12 extending upwardly from element 10 of Begouen is the finger. Nothing in Begouen suggests that a plurality of such fingers would be appropriate or desirable. In addition, member 10 and finger 12 are moved in a slidable fashion between locked and unlocked positions and are spring biased by spring 13 to the locked position. Thus, finger 12 is not a resilient finger, but simply a slidable structure. By contrast, Applicant's invention includes engaging fingers which are resilient, which means that the fingers are capable of recovering their original resting position after being strained in a manner to move them to the unlocked position. Applicant thus submits that claim 26 in its original form is allowable.

Inasmuch as the bottle security device of the present invention includes an inner member having a plurality of downwardly extending locking fingers with a portion of each locking finger being disposed in a cavity of an intermediate member and wherein a rotatable member engages and moves a portion of the intermediate member to unlock the device when the rotatable mover is rotated; that the security

device includes an inner member including a plurality of downwardly extending locking fingers, an outer member having a side wall, an engaging finger projecting upwardly within the cavity between the outer member side wall and the locking fingers and a rotatable member which engages the engaging finger along a camming surface to move the finger radially to unlock the device; and that the method of using the bottle security device includes the step of forcing resilient fingers to move radially to unlock an inner member from the fingers by rotating a rotatable member wherein the resilient fingers extend upwardly inside a cavity of an outer member and selectively lockably engage the inner member; Applicant submits that the bottle security device of present invention as claimed is patentable over the cited references.

The Examiner also rejected claim 25 under 35 USC 102(e) as being anticipated by Burton (GB 2,082,552).

Applicant submits that claim 25 as originally drafted is allowable over Burton. However, claim 25 has been amended to indicate that the resilient engaging fingers lockably engage the inner member to lock the device to clarify the locking engagement between the engaging fingers and the inner member. Applicant submits that this clearly defines over Burton.

Burton teaches a child resistant container enclosure assembly for use with a container 2. The Burton device includes an outer member 3 which is permanently located at the mouth of the container (page 1, lines 87-89). Because outer member 3 is to be permanently located there, it may be formed with container 2 as a singular tubular component (page 1, lines 94-96). Outer member 3 includes a press tab 8, which the Examiner has identified as the engaging finger in the present rejection. The pertinent device further includes an inner member 4 which has a top wall 12 with a downwardly depending side wall 14 with a resilient locking arm 16 extending outwardly from side wall 14. Side wall 14 includes a tapered free edge 17 which when attached to container 2 is disposed inward of the neck or top thereof to form a seal with the container. Inner member 4 is inserted within outer member 3 so that resilient locking arm 16 moves inwardly past a shoulder 16 of outer member 3 and

springs back after passing below shoulder 6 into a locking position to prevent inner member 4 from being pulled out of the cavity of outer member 3. Inner member 4 is rotatable within the cavity of outer member 3 whereby locking arm 16 is moved away from press tab 8 to prevent a child from removing inner member 4. Thus, locking arm 16 lockingly engages shoulder 6 of outer member 3 to prevent removal of inner member 4.

In order to remove inner member 4 from outer member 3, inner member 4 is rotated so that locking arm 16 of inner member 4 is aligned with press tab 8 of outer member 3 so that press tab 8 may be pressed inwardly to move locking arm 16 inwardly of shoulder 6 so that inner member 4 may be moved upwardly past shoulder 6 to remove inner member 4 from outer member 3. Thus, it is clear that locking arm 16 forms a locking engagement with shoulder 6 and does not form a locking engagement with press tab 8. To the contrary, press tab 8 engages locking arm 16 only to unlock arm 16 from its engagement with shoulder 6. Thus, Applicant submits that claim 25 as amended clearly indicates that the engaging fingers selectively lockably engage the inner member in order to lock the device in contrast with the press tab 8 of Burton. Therefore, Applicant submits that claim 25 as amended is allowable.

Inasmuch as the bottle security device of the present invention includes an inner member adapted to fit around at least a portion of a bottle neck, an outer member defining a cavity and having a side wall with an inner surface with a portion of the inner member being disposed in the outer member cavity, a plurality of resilient engaging fingers extending upwardly inside the outer member cavity and selectively lockably engaging the inner member to lock the device and a plurality of strengthening fingers extending upwardly inside the outer member cavity and abutting the inner surface of the outer member side wall, Applicant submits that the device of the present invention is patentably distinct from the cited references.

The Examiner rejected claim 17 under 35 USC 103(a) as being unpatentable over Begouen in view of Michael et al. (US Patent 6,604,643).



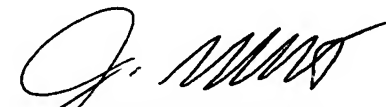
In light of the amendment to claim 1, Applicant submits that claim 17 is allowable as depending from an allowable claim 1, as previously discussed above.

Applicant has added new dependent claims 27-44 to present combinations not previously considered and to further clarify the distinction between Applicant's invention and the cited references. Applicant submits that dependent claims 27-30 are allowable as depending from allowable claim 1, that claims 31-33 are allowable as depending from allowable claim 19, that claims 34-38 are allowable as depending from claim 25 and that claims 39-43 are allowable as depending from allowable claim 26. In addition, Applicant submits that as discussed above or as will otherwise be evident, claims 27-43 further clearly define over the cited references and are allowable in their own right.

In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal notice of allowability for the claims. Please call the undersigned attorney if any questions remain after this amendment.

Respectfully submitted at Canton, Ohio this 5<sup>TH</sup> day of MAY, 2005.

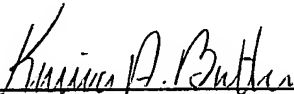
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